

Summary

In *Citizens United v. FEC*, the Supreme Court invalidated two provisions of the Federal Election Campaign Act (FECA), finding that they were unconstitutional under the First Amendment. The decision struck down the long-standing prohibition on corporations using their general treasury funds to make independent expenditures, and Section 203 of the Bipartisan Campaign Reform Act of 2002 (BCRA), prohibiting corporations from using their general treasury funds for "electioneering communications." BCRA defines "electioneering communication" as any broadcast, cable, or satellite communication that refers to a clearly identified federal candidate made within 60 days of a general election or 30 days of a primary. The Court determined that these prohibitions constitute a "ban on speech" in violation of the First Amendment. The Court, however, upheld the disclaimer and disclosure requirements in Sections 201 and 311 of BCRA as applied to a movie regarding a presidential candidate that was produced by Citizens United, a tax-exempt corporation, and the broadcast advertisements it planned to run promoting the movie.

As a result of the Court's ruling, federal campaign finance law no longer restricts corporate or, most likely, labor union use of general treasury funds to make independent expenditures for any communication expressly advocating election or defeat of a candidate. In addition, the law now also permits corporate and union treasury funding of electioneering communications. However, the law prohibiting contributions to candidates, political parties, and political action committees (PACs) from corporate and labor union general treasuries still applies.

In response to the Supreme Court's ruling, various proposals have been discussed and legislation has been introduced in the 111th Congress, including for example H.Con.Res. 13, H.J.Res. 13, H.J.Res. 68, H.J.Res. 74, H.R. 158, H.R. 1095, H.R. 1826, H.R. 2038, H.R. 2056, H.R. 3574, H.R. 3859, H.R. 4431, H.R. 4432, H.R. 4433, H.R. 4434, H.R. 4435, H.R. 4487, H.R. 4510, H.R. 4511, H.R. 4517, H.R. 4522, H.R. 4523, H.R. 4527, H.R. 4537, H.R. 4540, H.R. 4550, H.R. 4583, H.R. 4617, H.R. 4630, H.R. 4644, S.J.Res. 28, S. 133, S. 752, S. 2954, S. 2959, and S. 3004. This report provides an analysis of the constitutional and legal issues raised by several proposals, organized by regulatory topic: increasing disclaimer requirements, increasing disclosure for tax-exempt organizations, requiring shareholder notification and approval, restricting U.S. subsidiaries of foreign corporations, restricting political expenditures by government contractors and grantees, taxing corporate independent expenditures, and providing public financing for congressional campaigns. The report also addresses amending the Constitution.

For a comprehensive discussion of legislation that has been introduced and an analysis of policy options, see CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by R. Sam Garrett. For a legal analysis of the Supreme Court's ruling, see CRS Report R41045, *The Constitutionality of Regulating Corporate Expenditures: A Brief Analysis of the Supreme Court Ruling in Citizens United v. FEC*, by L. Paige Whitaker.